



मामला क्रमांक 67 A No. 690 सन् 2001

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPELLANTS: (IN JAIL)	1. Sadhu Ram, S/o Ronu Ram Age 29 years, R/o Sargipal Hikmipara. 2. Ronu Ram, S/o Sonu Ram, Age 62 years, R/o Sargipal Hikmipara, Police Station Bodhghat, Jagdalpur, District: Bastar.
		-Versus-
	RESPONDENT:	The State of Chhattisgarh,
	Present: Shri R.N. Jha, counsel for the appellants. Shri Ashish Shukla, Additional Public Prosecutor with Shri Akhil Mishra, Panel Lawyer for the State/respondent.	
	Division Bench: - Hon'ble Shri L.C. Bhadoo & Hon'ble Shri Dharendra Mishra, JJ.	
	ORAL JUDGMENT (Delivered on 10-4-2007)	
	L.C. Bhadoo, J. 1) This appeal is directed against the judgment of conviction and order of sentence dated 27 th June 2001 passed by the Special Judge, S.C./S.T. Act, Bastar at Jagdalpur in S.T. No.118/2000 whereby learned Special Judge after holding accused Sadhu Ram guilty for commission of offence under Section 302 of the	

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	I.P.C., sentenced him to undergo imprisonment for life & to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 1 year; and co-accused Ronu Ram guilty for commission of offence under Section 302 read with Section 34 of the I.P.C., sentenced him to undergo imprisonment for life & to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 1 year. 2) Case of the prosecution, in brief, is that on 3rd January 2000 at about 4 p.m. PW-2 Laxman went to Laxman Devi Temple. ~~Lachchu also came in the temple.~~ Accused Ronu Ram and Sadhu Ram also came there. Hando, Sampat and Sukhdev were also present in the temple. After performing Pooja they took their meal. At about 1.30 p.m. Lachchu Gond also came there. Laxman gave him food. After some time they started leaving temple for going to their residence, at that time Lachchu (since deceased) asked Ronu as to why they are defaming him saying that he is in the habit of committing theft of 'Sulphi'. Hearing this, accused Sadhu Ram brought trident (Trishul), attempted to attack Lachchu. However, Laxman intervened, as a result of which trident hit on the right eyebrow of Laxman, but Laxman could manage to snatch the trident from Sadhu Ram, on which Sadhu Ram went inside the temple and brought Kadari (knife), he came rushing towards Lachchu. Accused Ronu caught hold of Lachchu by his hands. Accused Sadhu Ram attacked Lachchu with Kadari on his head and chest, as a result of which Lachchu fell down. Thereafter, Sadhu Ram	

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	attacked 3-4 times with a Kadari, as a result of which Lachchu succumbed to the injuries spontaneously. 3) The report Ex.-P/2 was lodged in the Police Station Bodhghat by Laxman (PW-2). Merg intimation Ex.-P/3 was also given by Laxman. After registration of the crime, the Investigating Officer left for scene of occurrence. He prepared inquest Ex.-P/4 on the body of Lachchu. While in the police custody, accused Sadhu Ram gave memorandum Ex.-P/5, in pursuance of that, weapon of offence Kadri (knife) was seized under Ex.-P/6. Trident was seized under Ex.-P/7. The body of Lachchu was sent for postmortem examination to the Maharani Hospital, Jagdalpur under Ex.-P/12 where Dr. Vivek Joshi (PW-9) conducted the postmortem and prepared postmortem report Ex.-P/24 in which he opined that cause of death was haemorrhage and shock on account of injuries sustained by him. Death was homicidal in nature. Dr. K.M. Gupta examined injuries of Laxman and he gave his report Ex.-P/9. Kadri, weapon of offence, was also examined by Dr. Joshi and he gave his report Ex.-P/11-A. Site plan Ex.-P/15 was prepared. 4) After completion of investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Jagdalpur, who in turn committed the case to the Special Judge, Jagdalpur, where the prosecution examined 11 witnesses. Statements of the accused persons were recorded under Section 313 Cr.P.C. in which they denied material appearing against them in the prosecution	

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	evidence. They stated that they have been implicated in a false crime on account of animosity. One defence witness namely, Murha was examined as DW-1. 5) Learned Special Judge after hearing arguments of learned counsel for the respective parties, convicted and sentenced the accused persons as aforementioned. 6) We have heard learned counsel for the parties. 7) Learned counsel for the accused/appellants has not disputed homicidal death of deceased Lachchu. Moreover, as per the evidence of PW-2 Laxman and PW-4 Mangli Bai, who witnessed the crime in question as also evidence of PW-9 Dr. Vivek Joshi, who conducted postmortem and has stated that the death of the deceased was homicidal in nature, it is established that death was homicidal in nature. 8) As far as involvement of the accused/appellants in the crime in question is concerned, the incident was witnessed by PW-2 Laxman, brother of the deceased and PW-4 Mangli Bai, wife of Laxman. They have categorically stated that on the fateful day they were present in the temple. When Lachchu asked Ronu Ram as to why he is being defamed saying that he is thief of Sulphi, on which Sadhu Ram, son of co-accused Ronu Ram, brought trident and tried to attack, on which he intervened and he sustained injury on the right eyebrow, somehow he could manage to snatch the trident. Thereafter, Sadhu Ram went	

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	inside the temple and brought Kadari (Knife) whereas, accused Ronu Ram caught hold of Lachchu by his hands. Accused Sadhu Ram attacked with knife on his chest and head, as a result of which Lachchu fell down. In the meantime, accused Ronu ran away but accused Sadhu again attacked Lachchu on his back with a Kadri, as a result of which he succumbed to the injuries. The evidence of these two witnesses is consistent. We do not find any infirmity in the evidence of these two witnesses. Even in cross-examination, defence has not been able to bring on record any circumstance to discredit the evidence of these two witnesses. Moreover, PW-2 Laxman intervened in the first instance when accused Sadhu attempted to attack Lachchu with a trident, as a result of which this witness sustained injury of trident on his right eyebrow. Therefore, from the evidence of these two eyewitnesses, it is established that accused Sadhu in the first instance attacked the deceased with knife on his chest and head, at that time, accused Ronu was holding Lachchu, thereafter, Lachchu fell down and Ronu ran away. Accused Sadhu even at that time did not stop and he again attacked Lachchu with Kadri, as a result of which Lachchu sustained fatal injuries. Even his lungs were damaged. Their ocular evidence is corroborated by the medical evidence of Dr. Vivek Joshi (PW-9) as also evidence of PW-7 Dr. K.M. Gupta who has stated that he examined injuries of Laxman. As far as accused Sadhu is concerned, it is established from the clear, cogent and legal evidence that he attacked the deceased with Kadri	

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	mercilessly with intention to cause death of Lachchu. He caused as many as 7 injuries on the vital part of the body. 9) Now, coming to the nature of crime committed by accused Ronu Ram, Shri Jha argued that the prosecution has failed to establish that accused Ronu Ram was having common intention with Sadhu Ram to commit murder of the deceased. He drew attention of the Court towards F.I.R. given by Laxman in which it has been mentioned that in the first instance Sadhu tried to attack the deceased with trident, when trident was snatched, he went inside the temple, brought Kadri and he attacked Lachchu with Kadri, at that time, accused Ronu caught hold of Lachchu by his hands, when he made 3 assaults, deceased Lachchu fell down. Accused Ronu ran away. Even thereafter accused Sadhu continued to attack. He attacked 3-4 times on the back side of the body which damaged lungs of the deceased. From the above facts, at the most, it can be said that accused Ronu was sharing intention up to the extent of causing grievous injury with a sharp edged weapon i.e. knife because when initially injuries were caused, accused Ronu Ram ran away. Thereafter, he did not participate in the crime but accused Sadhu Ram continued to attack. This shows that when he caught hold of deceased Lachchu he was having knowledge that accused Sadhu would cause grievous injuries with knife. Therefore, offence under Section 326 of the I.P.C. against accused Ronu Ram was made out.	

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	10) For the foregoing reasons, conviction and sentence imposed upon accused Ronu Ram under Section 302 read with Section 34 of the I.P.C. cannot be sustained. 11) In the result, (i) Appeal of accused Sadhu Ram fails, same is liable to be dismissed and it is hereby dismissed, as we do not find any illegality or infirmity in the judgment of the trial Court. However, default sentence of R.I. for one year imposed upon accused Sadhu Ram is reduced to R.I. for one month. (ii) Appeal of accused Ronu Ram partly succeeds. Conviction and sentence imposed upon him under Section 302 read with Section 34 of the I.P.C. are set aside. Instead thereof, he is convicted under Section 326 of the I.P.C. and sentenced to undergo R.I. for 3 years. His bail bonds are cancelled. He is directed to surrender before the trial Court to undergo remaining sentence. It is made clear that accused Ronu Ram shall be entitled for set off for the detention period during investigation and trial.	
Barve	Sd/- L.C.BHADOO Judge	Sd/- DHIRENDRA MISHRA Judge

2/3/14